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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**MICHAEL R. COOK,**

**Petitioner,**

**vs.**

**UTAH STATE HEALTH DEPT. and  
WORKERS COMPENSATION FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 07-0211**

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Michael R. Cook asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's denial of Mr. Cook's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Cook claims workers' compensation benefits from Utah State Health Dept. and its insurance carrier Workers Compensation Fund for a work accident that occurred on November 16, 2006. After holding an evidentiary hearing, Judge La Jeunesse denied Mr. Cook's claim for failing to satisfy the test for legal causation.

In his motion for review, Mr. Cook argues that the exertion from the November 16, 2006, work accident was an unusual and extraordinary activity compared to his own everyday non-work activity.

**FINDINGS OF FACT**

The Appeals Board adopts Judge La Jeunesse's findings of facts. The facts relevant to the current motion for review are that Mr. Cook injured his back at work on November 16, 2006, after lifting three 25-pound boxes (one at a time) from the floor to his desk. Prior to the work injury, Mr. Cook had a long history of chronic low back problems that contributed to his back injury.

**DISCUSSION AND CONCLUSIONS OF LAW**

Section 34A-2-401 of the Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. To qualify for benefits under the foregoing standard, an injured worker must establish, among other elements, that his or her work

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was the “legal cause” of the injury. Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). The requirement of legal causation is further explained in Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986):

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee’s duties, will suffice to show legal cause. **However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the “usual wear and tear and exertions of nonemployment life.”** . . . The requirement of “unusual or extraordinary exertion” is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted; emphasis added.)

Because Mr. Cook suffered from a preexisting condition that contributes to his current back problems, his claim is subject to the second, more stringent, test for legal causation, which requires that he show his work-related exertion was “unusual or extraordinary.” Mr. Cook argues that taking into consideration his preexisting back condition, the exertion involved in lifting the 25-pound boxes was unusual for him. However, in Price River Coal, the Utah Supreme Court further explained that “[i]n appraising whether the employee’s exertion would be usual or ordinary in nonemployment life, an objective standard is to be applied that is based on the nonemployment life of the **average person**, not the nonemployment life of a particular worker.” Id. at 1082 (emphasis added).

The Appeals Board finds that the exertion involved in lifting three 25-pound boxes from the floor to the desk, one at a time, does not constitute “unusual or extraordinary exertion” compared to the exertions that the **average person** experiences in his or her nonemployment life. Therefore, the Appeals Board concludes that Mr. Cook has not satisfied the test for legal causation.<sup>1</sup>

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<sup>1</sup> Mr. Cook also appears to dispute issues involving medical causation, but since he has not established the prerequisite legal causation, medical causation consideration is unnecessary.

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**ORDER**

The Appeals Board affirms Judge La Jeunesse's decision. It is so ordered.

Dated this 2<sup>nd</sup> day of May, 2008.

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Colleen S. Colton, Chair

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Patricia S. Drawe

**CONCURRENCE**

For the reasons stated in my concurring opinion in Hemming v. IHC North Ogden, Case No. 06-0547, issued July 12, 2007, I also concur with the result of the Appeals Board's majority decision in this case.

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Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.